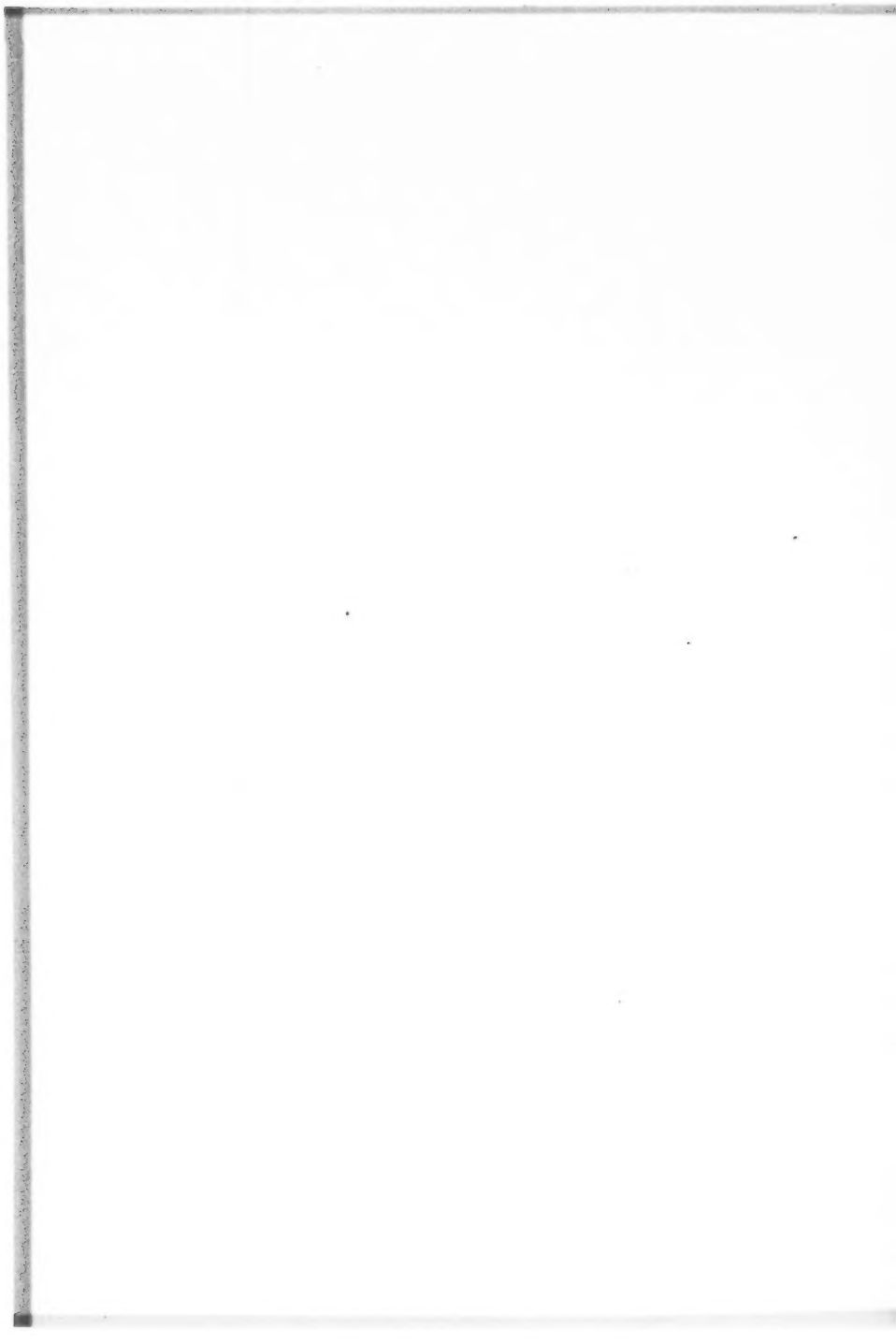

SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term, 1973

No. 73-235

MARCO DE FUNIS, *et al.*,

Petitioners,

vs.

CHARLES ODEGAARD, President of the University of Washington, *et al.*,

Respondents.

On Writ of Certiorari to the Supreme Court of Washington

BRIEF OF THE AMERICAN JEWISH CONGRESS, *AMICUS CURIAE*, IN SUPPORT OF PETITIONERS

THEODORE R. MANN
Attorney for American Jewish Congress, Amicus Curiae
15 East 84th Street
New York, New York 10028
(212) 879-4500

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This brief is submitted with the consent of the parties.

Statement of the Case

This suit was initiated in 1971 by petitioner Marco De Funis and members of his family after his application for admission to the law school of the University of Washington was rejected. He asserted that the rejection was on the basis of race and that it therefore violated the Equal Protection Clause of the Fourteenth Amendment. His complaint was sustained, following trial, in the Superior

Court of the State of Washington. The Supreme Court of the state reversed, voting 5 to 2. This Court granted certiorari to review that decision.

The facts are stated in the brief of petitioners and in the extensive opinions of the Supreme Court of the State of Washington. The critical facts, in our view, are these:

1. Applicants to the limited places available in the entering class of the Washington University Law School are placed in two separate pools on the sole basis of race. Minority applicants are compared only with other minority applicants, not with nonminority applicants. The Law School defines minority applicants as including only Black Americans, Chicano Americans, American Indians and Philippine Americans.

2. Selections for admission are in effect made separately from the two pools. Although the Law School denied the existence of a fixed numerical quota, admittedly a sufficient number of applicants are selected out of the minority pool—without regard to overall comparisons with the entire pool of applicants—to yield a "reasonable representation" of minority students.

3. As a result of this process, some minority students are selected for admission who would be summarily rejected were they outside the defined minority group.

4. No effort is made to ascertain the cultural and economic handicaps or advantages of individual applicants and they are not compared on that basis. The minority applicant from a middle-class environment and a superior school system remains a part of the minority pool. The white applicant from an impoverished, deprived environment is compared only with other whites.

5. Nor is any effort made to determine the future goals of prospective applicants of any race and more particularly the extent of their commitment to the effective representation of all groups in the community, especially the underprivileged. The difference in standards applied to the two groups is based on race alone.

Interest of the *Amicus* and Question to Which This Brief Is Addressed

The American Jewish Congress is a national organization of American Jews founded in 1918 and concerned with the preservation of the security and constitutional rights of American Jews through preservation of the rights of all Americans. Since its creation, it has vigorously opposed racial and religious discrimination in employment, education, housing and public accommodations and has supported programs which would increase opportunities for disadvantaged minorities and speed the day when all Americans may enjoy full equality without regard to race.

We submit this brief because we believe that our system of constitutional liberties would be gravely undermined if the law were to give sanction to the use of race in the decison-making processes of governmental agencies and because we believe that disadvantaged students can be aided by other procedures that are both constitutional and practical.

The American Jewish Congress believes that, in order to achieve equal educational opportunities for disadvantaged applicants, a university

> —should not make admissions decisions on the basis of mechanical scores and grade averages alone;

—should consider such factors as poverty, deprived family background, inadequate schooling or the other circumstances which may lead to lower scores in admissions aptitude tests;

—should seek out and admit applicants from all segments of the community nad provide special assistance to students who suffer academic handicaps as a result of cultural and economic deprivation.

Such admissions procedures, which genuinely attempt to seek out the culturally and economically deprived and to weigh previous performance in the light of such deprivations, would raise no question of equal protection of the laws. But that is not this case.

The sole question in this case, in our view, is whether state law school admission procedures may treat applicants differently, subjecting them to different standards and different basis of comparison, solely because of their race. We submit that such a procedure is constitutionally prohibited.

ARGUMENT

The racial classification adopted by Washington State Law School in its admissions procedure violates the Equal Protection Clause of the United States Constitution.

"[R]acial classifications are 'obviously irrelevant and invidious'." *Goss* v. *Board of Education,* 373 U.S. 683, 687 (1963); *Steele* v. *Louisville & Nashville R. Co.,* 323 U.S. 192, 203 (1944). For this reason, the adoption of such classifications by a state agency is "suspect" and justifiable only by "pressing public necessity," *Korematsu* v. *United States,* 323 U.S. 214, 216 (1944), bears a "very

heavy burden of justification," *Loving* v. *Virginia*, 388 U.S. 1, 9 (1967), and must be subjected to the "most rigid scrutiny." *Korematsu, supra;* see also *McLaughlin* v. *Florida*, 379 U.S. 184, 191-2, 196 (1964).

The weight of the burden laid upon the states under this principle is illuminated by the fact that, except in the Japanese Exclusion cases, handed down in the crisis conditions of a wartime emergency, this Court has never upheld governmental action which deprived persons of an opportunity or a benefit on grounds of race or ancestry.[1]

The racial classifications struck down by this Court have not been limited to those aimed at any one particular racial or ethnic group. Nor have they been restricted to those deemed "invidious" because they stigmatize and denote the inferiority of a minority group. Racial classifications which fall on members of the minority and majority racial groups with equal force have been found constitutionally defective without reference to the issue of "stigma."[2] *McLaughlin* v. *Florida*, 379 U.S. 184 (1964);

1. *Korematsu, supra* and *Hirabayashi* v. *United States*, 320 U.S. 81 (1943), upholding the exclusion of Japanese Americans from large sections of the West Coast, involved a temporary deprivation in time of war and threatened invasion which the Court deemed justified as necessary to meet the danger of sabotage and espionage. Even so, they have been severely criticized on both legal and factual grounds. Ten Broek, Barnhart and Matson, Prejudice, War and the Constitution, pp. 308-9, 325-334 (1954); Grodinz, Americans Betrayed: Politics and the Japanese Evacuation (1949); Rostow, The Japanese American Cases—A Disaster, 54 Yale L.J. 489 (1945).

2. Realistically speaking, the racial classification herein is doubly "invidious." Since its underlying rationale must be that minority groups, *qua* minorities, cannot compete for limited admission places on the same terms as nonminority applicants, it "stigmatizes" the minorities. And since its effect is to deny highly desired places to nonminority applicants because they are of one race rather than another, it is "invidious" as to them.

Loving v. *Virginia*, 388 U.S. 1, 10 (1967); see also *Shelley* v. *Kraemer*, 334 U.S. 1 (1948); *Buchanan* v. *Warley*, 245 U.S. 60 (1917).

To survive legal challenge, then, it is immaterial whether a racial classification is thought to be "benign" or "invidious." Rather, the test is whether the classification can be "shown to be necessary" (*McLaughlin, supra*) to "the accomplishment of some legitimate overriding statutory purpose." *Loving, supra*, at 11.

A. The racial classifications inhering in the Law School's admissions procedure are not necessary for the accomplishment of any legitimate purpose.

To the extent that the state has a legitimate public interest in overcoming cultural and educational disadvantages of persons applying for admission to its Law School, it can and should do so without consideration of race. Thus, prohibiting the University of Washington from using admission procedures which treat applicants differently solely because of race would not bar the Law School from considering the problems of disadvantaged students and assisting them in overcoming cultural or economic handicaps, thereby expanding the educational opportunities of our nation's historically deprived minorities, among others. A law school could not only encourage applications from all groups in the community, it could engage in particularly vigorous recruiting in areas and institutions where there are likely to be large numbers of disadvantaged students. It could also provide compensatory educational preparation, both prior to admission and during school attendance

for those whose backgrounds have handicapped them scholastically.

Nor would a prohibition of racial classification require educational institutions to admit students solely on the basis of numerical ranking on standardized tests or prior academic performance as evidenced by mathematically computed grades.[3] Schools may and, we think, should evaluate these scores in the light of a candidate's family background; whether he came from a culturally impoverished home; the nature and quality of the schools he attended; whether family circumstances required him to work while attending school; whether he chose to participate in athletics, the orchestra, school newspaper, literary magazine, campus government; whether he had demonstrated a concern and interest in the broader community by political activity or volunteer work among the sick or underprivileged; and whether he had manifested leadership, industry, perseverance, self-discipline and intense motivation. All of these factors may constitutionally and legitimately be considered by the school. They not only provide a method of interpreting the numerical scores but also reveal the presence of additional qualities which are predictive of potential for success in school, in the professions and as a contributor to society at large.

Moreover, if a school were to conclude that the legal profession as presently composed fails to serve the dis-

3. It has been argued that many standardized tests are culturally biased in favor of white middle class culture and do not reveal the innate ability of the culturally disadvantaged student. However, the court below specifically declined to hold that the examinations in this case were less reliable indicators of law school performance for minority students than for others. 507 P. 2d at 1186. Hence, the issue of whether the use of such tests is constitutional is not raised in this case.

advantaged elements in society—although the demonstrated professional aspirations of recent classes of law school graduates makes such a judgment questionable—then it could also consider whether applicants for admission, black or white, express a commitment to serve those groups currently lacking adequate legal service.[4]

All of these procedures would result in greater educational opportunities for members of our society's historically deprived minorities, as well as other applicants who are economically and culturally deprived; none of these procedures would offend the Constitution. But what the school may not do, we submit, is to classify applicants for admission on the basis of race, assume that all of one race are culturally deprived or economically handicapped and all of another race are not, and so structure its selection process as to admit an essentially predetermined proportion from each racial group.

It is this kind of arbitrary and factually unsound assumption that the Equal Protection Clause condemns. The fact is that many whites suffer economic and cultural deprivation; many are psychologically blighted by poverty; many have attended inadequate schools; and many must work while in school to support themselves and their families. Many are deeply committed to serving the disadvantaged of all races, and that is their principal motivation to become lawyers. Conversely, many applicants from

4. It has been pointed out that there is no reason to assume that minority group graduates will necessarily choose to serve in the minority group community. Indeed, it is arguable that that should not be demanded of them. They should have both the right and the opportunity to choose instead to seek entrance into the general economy, via the "Wall Street" firm or otherwise.

minority races come from middle-class homes and good schools. All this is ignored by an admission procedure which, in the words of the court below, "does not include personal interviews and does not reveal whether applicants are poor or affluent" (507 P. 2d at 1173), which casts all minority applicants regardless of background into one pool and all nonminority applicants regardless of background into another, and compares members of each racial group only with those of the same grouping. Through this procedure, racial assumptions are arbitrarily and unconstitutionally applied so as to defeat the personal rights of individuals to be free from discrimination on grounds of race. This Court has held that such action is prohibited by the Equal Protection Clause. See, e.g., *Henderson* v. *United States*, 399 U.S. 816, 824, 825 (1950); *Mitchell* v. *United States*, 313 U.S. 80, 97 (1941); *McCabe* v. *Atchison T. & S. F. Ry.*, 235 U.S. 151 (1914).

If the command of equal protection is to be obeyed, the law school must compare all applicants with each other on the basis of all pertinent factors—of which race is not one—giving each factor its due weight. Only in this way can the constitutional demands of justice and equality be met.

B. The racial classification herein is not justified by any valid compelling state interest. The reasons advanced below are neither legitimate nor sufficient.

None of the interests which the court below advanced as justification for the Law School's action have that element of legitimacy, urgency and awesome need which this Court has held essential to overcome our traditional ab-

horrence of racial classification. Indeed, not only do the considerations cited by the state court fail to satisfy the burden of urgent necessity but they are themselves antithetical to the basic principles on which our society and its institutions are founded. See *Mulkey* v. *Reitman*, 64 Cal. 2d 529, 544, 413 P. 2d 825, 835 (1966), aff'd 387 U.S. 369 (1967); *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960).

In essence, the Washington court's holding that a racial double standard is a valid means for eliminating "racial imbalance" in law schools and in the legal profession rests on the rationale that race is a job-related factor for lawyers, at least for a certain percentage of them, and hence a legitimate qualification for law students. Thus, the opinion below argues that, because lawyers should be "cognizant of the views, needs and demands of all segments of society," the production of a racially balanced student body through dual racial standards is justified. Furthermore, contends the Washington court, the "legal professional plays a critical role in the policy-making sector of our society," there is a "shortage of minority attorneys—and, consequently, minority prosecutors, judges and public officials—" and, therefore, "If minorities are to live within the rule of law, they must enjoy equal representation within our legal system." 507 P.2d 1169, 1183-4.

The "compelling state interest" thus postulated by the Washington court assumes that only members of a particular ethnic group can understand, respond to and represent members of that group or communicate their needs and aspirations, both in the classroom and in the courtroom. This assumption embodies a conception of "group think" in which all members of a particular minority group have

an identical and distinct set of views and values arising out of an identical life experience. It assumes that race and ethnicity transcend all other factors which tend to result in common values, views and needs, on the one hand, or diverse ones, on the other. It represents the ultimate denial of a trained professional's ability to transcend his own life, style, experience and group identity in the effective discharge of his professional responsibilities.

If this ethno-centric view were correct, then, conversely, from the standpoint of the minority constituency, there would be a right, entitled to recognition as a "compelling state interest," to have available a substantially proportionate number of attorneys, prosecutors and judges of their own race. Under this premise, an indigent defendant would be entitled not only to court-appointed counsel, but to an attorney who is a member of his particular racial or ethnic group. Law firms with predominantly minority practice could, with constitutional propriety, refuse to hire nonminority employees on the ground that they could not properly serve their clients.[5]

By the same token, if the view expressed below were valid, then minority group members need not abide by statutes and decisions made by a judiciary or legislature

5. Conversely, acceptance of this view would endanger progress toward integration of minority practitioners in firms with predominantly nonminority clients. Over the years, we have consistently supported the now well-established principle, that discrimination in employment cannot be justified on the ground that minority employees are unable effectively to understand or deal with those of another race or that customers or clients of a particular firm feel more "comfortable" with those of their own racial, religious or ethnic background. Is that discredited notion now to be reintroduced in reverse garb?

that lacked a substantially proportionate representation of their own racial or ethnic group. Indeed, the court below virtually says this in so many words. 507 P.2d at 1184.

The entire concept which underlies the decision below is factually and psychologically unsound, legally and constitutionally erroneous, and profoundly damaging to the fabric of American society.[6] It should be squarely rejected.[7]

The concept that race is a job-related qualification for lawyers or any other profession or occupation has been explicitly repudiated by the Congress of the United States. In formulating Federal antidiscrimination policy, Congress

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6. Many public officials, white and black, transcend their group consciousness to represent the concerns and interests of all their constituents and, in fact, of all Americans. But this case involves law schools and lawyers, and we need look no further than the reported decisions of this Court in the last fifteen years, briefed and argued by attorneys such as Jack Greenberg, Anthony Amsterdam and Michael Meltsner. Can it be seriously urged that these white attorneys are unable to understand, empathize with, articulate and represent the views, needs and interests of minority groups to which they do not belong but whose cause they frequently plead? How ironic it would have been if practitioners such as these had been denied admission to law school because of a racial classification system grounded in the supposition that they could not be expected to supply adequate legal representation to members of minority groups.

7. The court below also sought to justify the Law School's minority preference policy on the ground that minority groups were seriously underrepresented in the Law School even though such groups participated on an equal basis in the tax support of the School. 507 P.2d at 1182. This contention is factually incorrect, legally unsound and unworthy of serious consideration. All persons are entitled to equality of opportunity to be admitted to a state-supported school without regard to race or to taxes paid by members of their race. That is a far cry from justifying state-imposed racial proportional representation. Clearly, if public benefits and opportunities are to be distributed to members of racial and ethnic groups in proportion to the taxes each group pays, the present disadvantages which afflict many members of racial and ethnic minorities would be sharply increased rather than reduced.

provided that race or color could never be a qualification for any position. It made no exemption for law schools or law firms. Thus, although Title VII of the Civil Rights Act of 1964 permits employers to utilize such suspect classifications as national origin, sex or religion, if they can establish this to be a "bona fide occupational qualification," the Act provides no such exemption for alleged qualifications based on race or color, 78 Stat. 255 (1964), 42 U.S.C. §2000e 2(e).[8]

Similarly, state regulatory agencies administering state fair employment practices statutes containing exceptions for "bona fide occupational qualifications" early held that race and color were not job-related qualifications.[9]

The legitimization of racial quotas[10] or balancing on the theory that this is a necessary means to achieve adequate understanding of the needs, views and values of minority groups cannot be confined to law schools and the legal profession. The same theory, if valid, would apply to physicians, psychologists, social workers, bankers, businessmen, political officeholders and a broad spectrum of economic, professional and governmental occupations, with equally

8. Indeed, in Title VII Congress squarely prohibited employers from voluntarily granting preferential treatment to members of racial, ethnic, religious or sexual groups in order to correct "imbalance" in their work forces. 42 U.S.C. §2000e-2(j) (1964).

9. See e.g. *Survey Associates, Inc.* discussed in Report of Progress of New York State Commission Against Discrimination (1948, p. 73) (color held not to be a "bona fide occupational qualification" for a social worker working with Negro clients).

10. The court below indicated that the Law School did not have a racial quota, in the sense of a precisely fixed number of places allotted by race. Instead, the court used the term "proportionate representation." 507 P.2d at 1184. Factually and constitutionally this is a distinction without a difference.

profound and divisive implications. The result would be a race-conscious society in which a proportionate number of places in colleges, professional schools and occupational categories would be set aside for members of particular racial groups.

This is neither a whimsical nor a farfetched view. Proposals for racial proportional representation in schools of medicine, dentistry, education, architecture and other service professions are regularly advanced and in many cases instituted, each resting on the same premise as that underlying the decision below: that doctors of a particular race can better serve members of that race, social workers of a particular race can more compassionately understand clients of that race, and professors of a particular race can more effectively teach students of that race.

But the consequences of the theory adopted below extend even further. The argument that only persons of a particular group can understand and respond to the needs and demands of that group cannot be limited to minority racial groups. If valid, it would be equally applicable to ethnic, religious and sexual groups. The same demands for proportionality in schools, professions and occupations could justifiably be made by representatives of these groups, and, where proportionality is lacking, the application of racial, ethnic, religious or sexual classifications to eliminate the imbalance would be constitutionally valid. This, too, is neither a speculative nor a hypothetical possibility; it is a developing trend based on the example of racial quotas.

A society permeated by racial, ethnic, religious and sexual proportional representation would be something

quite different from the America we have known. Far from being abhorrent, invidious and irrelevant, racial and ethnic classifications would be officially sanctioned and recognized in all walks of life; each professional or office holder would be regarded, and would regard himself, as a representative of the group from whose quota he comes; and individual aspiration would be limited by the proportionate size of the group to which the individual belongs.

This Court has already struck down state-imposed employment quotas based on alienage, holding that state action which has the effect of denying certain inhabitants the right to work for a living on grounds of race or nationality is violative of the Equal Protection Clause because destructive of the "very essence of the personal freedom and opportunity * * * it was the purpose of the Amendment to secure." *Truax* v. *Raich*, 239 U.S. 33, 41 (1915). The Court has also recognized the tension and discord created by efforts to achieve racial proportional hiring when it upheld the right of a state to prohibit such efforts. *Hughes* v. *Superior Court*, 339 U.S. 460 (1950).

The racial classifications imposed by the Unversity of Washington and the theory under which they have been rationalized partake of the same evils which this Court correctly perceived in *Truax* and *Hughes*. The racial admission practices of the Washington State Law School should be similarly invalidated.

C. The racial preferential treatment policy of the law school is not sanctioned by past decisions dealing with correction of illegal discrimination.

The cases relied upon by respondents and the court below to justify use of racial criteria in law school admission procedures fall into two basic classes: those involving the desegregation of racially separate public elementary and secondary school systems and those seeking to remedy specific acts of employment discrimination in a particular industrial establishment. Both groups of cases are fundamentally distinguishable; neither upholds the use of racial classification or preference in the admission of applicants to a limited number of places in a particular educational institution.

The School Cases

The school desegregation cases differ from the case at bar in that they involve a pool of white and black students all of whom, regardless of their background or educational potential, must be admitted and educated by the particular system. Race is used only to determine placement in a particular unit of the school system. No student has a constitutional right superior to any other student to attend a particular school in the system. Therefore, when race is used in that placement procedure in order to achieve a valid and constitutionally mandated public educational objective, i.e., integrated public schools, no one has been "preferred" and no one has been deprived of equal protection of the laws. All students have obtained what state and Federal Constitutions guarantee: a public education in an integrated school. That is far different from the situation at bar. Here, racial classifications have been instituted to determine *who* will fill the limited number of seats avail-

able and, as a result of the operation of this admissions procedure, some applicants, because of their race, have been denied a law school education entirely.

Furthermore, in the school cases, the courts have approved consideration of the racial composition of student bodies solely as a remedy to desegregate schools previously subject to illegal segregation. *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971); *North Carolina State Board of Education* v. *Swann*, 402 U.S. 43 (1971); *Green* v. *County School Board*, 391 U.S. 430 (1968).

As this Court noted in *North Carolina State Board of Education* v. *Swann, supra*, the adoption of apparently neutral "color blind" school assignment plans by a previously segregated system would render illusory the promise of *Brown* for it would deprive school authorities of the one "tool absolutely essential to fulfillment of their constitutional obligation to eliminate existing dual school systems" (402 U.S. at 46). To assure the effective disestablishment of an officially maintained segregated school district and the creation of a "unitary system," this Court has upheld desegregation plans which take race into account in the allocation of the student body among the various schools in the system. However, as the court below candidly admits, there is no showing of discrimination by Washington State University or its law school. Thus, this case lacks the element which conspicuously distinguishes the school cases; that racial classifications are used solely and only to the extent necessary to remedy illegal discrimination practiced by the particular school system.[11]

11. There is a vital distinction, we submit, between remedial action to correct specific illegal acts of discrimination and a general rule allowing preferential treatment to undo the effects of past dis-

(footnote continued on next page)

The Employment Cases

The employment cases cited by the court below[12]—like the school cases—are characterized by judicial findings of specific prior discriminatory acts by the particular institution or employer involved. The problem in formulating a remedial order is to overcome the residual effects of past discrimination by that employer. Because of discrimina-

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crimination by society at large. Correction of conduct committed by an individual defaulter can be and has been limited to situations in which the default is precisely delimited and clearly established. Furthermore, the relief given is tailored to correct the particular situation and is usually imposed under the authority of a court or other tribunal.

It is quite different to give every state university, and all other official bodies as well, a license to ignore the constitutional prohibition of racial discrimination whenever they allege it is necessary to do so to correct the effects of past societal discrimination. There is no reliable procedure for determining the existence or scope of such past discrimination or its impact, if any, on the operations of the institution in question; nor are there standards for determining how recent, pervasive or gross societal discrimination must have been to warrant preferential treatment, what correlation there must be between past discrimination and present handicaps or at what point a period of nondiscriminatory treatment will terminate the right to a racial preference.

Finally, there are no agreed-upon ways to determine what measures are necessary to effect a remedy or even what groups shall be the beneficiaries of such preference. For example, the appellees herein chose to exclude Asiatic Americans from the operation of their preferential system. In light of the severe discrimination against these groups in the Western United States, many would disagree.

Relaxation of the constitutional requirement of equal treatment should not be permitted on so vague a basis. The effect, we submit, would be hardly different from outright nullification.

12. *Carter* v. *Gallagher*, 452 F. 2d 315 (8th Cir. 1971), *cert. den.* 406 U.S. 950 (1972); *Contractors Ass'n. of Eastern Pennsylvania* v. *Secretary of Labor*, 442 F. 2d 159 (3d Cir. 1971), *cert. den.* 404 U.S. 854 (1971); see also *United States* v. *Ironworkers Local 86*, 443 F. 2d 544 (9th Cir. 1971), *cert. den.* 404 U.S. 984 (1971); *Castro* v. *Beecher*, 459 F. 2d 725 (1st Cir. 1972); *United States* v. *International Brotherhood of Electrical Workers Local 212*, 472 F. 2d 634 (6th Cir. 1973); *United States* v. *Wood, Wire & Metal Lathers Union, Local 46*, 471 F. 2d 408 (2d Cir. 1973); *Bridgeport Guardians, Inc.* v. *Commission*, 482 F. 2d 1333 (2d Cir. 1973).

tion in hiring and promotion policies, segregated seniority lines, and non-job-related tests, the existing work force is not composed as it should have been had constitutional standards of nondiscrimination been maintained. In a discriminatorily created work force, only a limited number of job openings occur from time to time. Under these circumstances, a racially "neutral" policy superimposed on a racially discriminatory pattern would not effectively remedy and disestablish the discriminatory system. It would instead, perpetuate the effects of discrimination. Accordingly, the courts have reluctantly found it necessary to employ racial classifications in fashioning remedies.[13]

But admission to a law school class is fundamentally different. Each year all the positions are open for selection. There is no question of filling a few vacancies in an existing discriminatorily created work force. Rather, to use the employment analogy, it is as though the whole work force were hired anew each year. Thus, there is no issue of perpetuating discrimination (which here did not exist in any event) and no need or justification for imposing racial classifications or preferences in the annual admission of an entire new law school class.

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13. See e.g., *Vulcan Society* v. *Civil Service Commission*, 360 F. Supp. 1265, 1277-78, 5 FEP Cases 1225, 1239-40 (remedies based on racial classifications called "counterproductive," tending to "generate resentments"), aff'd, —— F. 2d ——, 6 FEP Cases 1045, 1053 (2nd Cir. 1973) (temporary quota system approved "somewhat gingerly" and "only because no other method was available for affording appropriate relief without impairing essential city services"); *Bridgeport Guardians, Inc.* v. *Commission*, 482 F. 2d 1333, 1340 (2d Cir. 1973) (quota relief approved "somewhat gingerly"); *Castro* v. *Beecher, supra*, 459 F. 2d at 736 (effort at compensatory racial relief termed "crude" to "be pursued with sensitivity and restraint"); *Shield Club* v. *City of Cleveland*, —— F. Supp. ——, 5 FEP Cases 566, 567 (N.D. Ohio 1973) (quota ordered, remedy choices found freighted with "weakness and individual and group inequities").

Conclusion

For the foregoing reasons, we respectfully urge that the judgment of the Washington Supreme Court be reversed and the admission procedures of the Washington State Law School declared unconstitutional under the Equal Protection Clause of the Fourteenth Amendment.

Respectfully submitted,

THEODORE R. MANN
Attorney for American Jewish Congress, Amicus Curiae
15 East 84th Street
New York, New York 10028

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